

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

RICHARD PARTAIN,

Petitioner,

No. 2:20-cv-00416-JE

v.

OPINION AND ORDER

BRAD CAIN,

Respondent.

MOSMAN, J.,

On September 29, 2020, Magistrate Judge John Jelderks issued his Findings and Recommendation (F. & R.) [ECF 16]. Judge Jelderks recommended that I dismiss the Petition for Writ of Habeas Corpus [ECF 2]. No objections were filed. Upon review, I agree with Judge Jelderks.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of


the magistrate judge as to those portions of the F. & R. to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F. & R. depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F. & R. 28 U.S.C. § 636(b)(1)(C).

CONCLUSION

Upon review, I agree with Judge Jelderk's recommendation and I ADOPT the F. & R. [ECF 16] as my own opinion. The Petition for Writ of Habeas Corpus [ECF 2] is DISMISSED and this case is DISMISSED with prejudice. Because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is DENIED. *See* 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 6th day of November, 2020.


MICHAEL W. MOSMAN
United States District Judge